IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MALIBU MEDIA, LLC, Plaintiff,	:	
	:	Civil No. 1:15-cv-01206-YK
v.	:	(Hon. Yvette Kane)
	:	
BOBBY SLAYTON, JR., Defendant.	:	

AMENDED ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

AND NOW, this 12th day of January, 2016, comes the above Defendant, by counsel, CGA Law Firm, and does file the within Amended Answer to Plaintiff's Amended Complaint averring that:

ANSWER

1. Admitted.

2. Denied.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

4. Admitted.

5. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended

Complaint. These averments are, therefore, denied, excepting that it is admitted that Defendant resides in this District.

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

7. Admitted in part and denied in part. It is admitted that venue is proper in this District. The remaining allegations contained in this paragraph of Plaintiff's Amended Complaint are denied.

8. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint.

9. Admitted.

10. Admitted in part and denied in part. It is admitted that BitTorrent can be used for peer-to-peer file sharing including the sharing of digital movie files. It is denied that BitTorrent is a network—it is, in fact a communication protocol. Defendant lacks knowledge or information sufficient to form a belief as to whether BitTorrent is the "most common" peer-to-peer protocol.

11. Admitted in part and denied in part. It is admitted that BitTorrent's protocol allows users to interact with each other directly. Defendant lacks

knowledge or information sufficient to form a belief as to the remaining allegations contained in this Paragraph of Plaintiff's Amended Complaint.

12. Denied. Although the allegations contained in this Paragraph present a somewhat accurate description of the operation of the BitTorrent protocol as far as Defendant is aware, Defendant lacks knowledge or information sufficient to form a belief as to the precise methods by which BitTorrent operates.

13. Denied. Although the allegations contained in this Paragraph present a somewhat accurate description of the operation of the BitTorrent protocol as far as Defendant is aware, Defendant lacks knowledge or information sufficient to form a belief as to the precise methods by which BitTorrent operates. Moreover, Defendant denies that he is an "infringer" as that word is used in this Paragraph of Plaintiff's Amended Complaint.

14. Denied. Although the allegations contained in this Paragraph present a somewhat accurate description of the operation of the BitTorrent protocol as far as Defendant is aware, Defendant lacks knowledge or information sufficient to form a belief as to the precise methods by which BitTorrent operates.

15. Denied. Although the allegations contained in this Paragraph present a somewhat accurate description of the operation of the BitTorrent protocol as far as Defendant is aware, Defendant lacks knowledge or information sufficient to form a belief as to the precise methods by which BitTorrent operates.

16. Denied. Although the allegations contained in this Paragraph present a somewhat accurate description of the operation of the BitTorrent protocol as far as Defendant is aware, Defendant lacks knowledge or information sufficient to form a belief as to the precise methods by which BitTorrent operates. Moreover, Defendant denies that he is an “infringer” as that word is used in this Paragraph of Plaintiff’s Amended Complaint.

17. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff’s Amended Complaint. These averments are, therefore, denied.

18. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff’s Amended Complaint. These averments are, therefore, denied.

19. Admitted in part and denied in part. It is admitted that Defendant has used the BitTorrent protocol to download pornographic films. It is denied that he copied or distributed any films at any time. After reasonable investigation, Defendant lacks knowledge or information sufficient to form a belief as to whether any—or even one—of the films downloaded were those identified by Plaintiff.

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff’s Amended Complaint. These averments are, therefore, denied.

21. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied, excepting only that it is admitted that UTC refers to Universal Time Code, which is used for computer forensic purposes.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

24. Denied.

25. Admitted in part and denied in part. It is admitted that Defendant's father is the listed subscriber for Defendant's home internet service account. Defendant specifically denies that any infringement occurred. Defendant lacks knowledge or information to form a belief about the truth of the remaining averments in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

26. Admitted with clarification. Defendant lives with both his Father and his Mother at the address listed.

27. Denied. Defendant believes, and therefore avers, that no infringement has occurred.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied. Defendant specifically denies that he is an "infringer" as that term is used in Plaintiff's Amended Complaint.

29. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

31. Admitted in part and denied in part. It is admitted that Defendant regularly uses the internet at his residence. It is denied that any infringement occurred. By way of further response, Defendant finds the allegations contained in this Paragraph to be deeply disturbing. Defendant has no idea how Plaintiff came to know that he has access to and regularly uses the Internet at his parent's house, but considers this "pre-suit investigation" to be a violation of his privacy and Defendant intends to seek full and complete disclosure of the methods utilized in such investigation to ensure that such activities were lawful.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied. Again, Defendant finds this allegation to be deeply disturbing. Defendant has no idea to which "publicly-declared" interests Plaintiff is referring or how such interests may, or may not, correlate to his online activities, but finds it extremely troubling that—apparently—Plaintiff has been monitoring him without his knowledge or consent. Defendant intends to seek full and complete disclosure of the methods utilized in such investigation to ensure that such activities were lawful.

33. Admitted in part and denied in part. It is admitted that Defendant was a user of BitTorrent. It is denied that he used the same to commit any unlawful infringement of Plaintiff's works.

34. The allegations contained in this paragraph assert a conclusion of law for which no response is required. To the extent a response is deemed required, Defendant denies such allegations.

35. Admitted in part and denied in part. It is admitted that counsel has entered an appearance on behalf of Plaintiff in this matter. Defendant lacks knowledge or information sufficient to form a belief concerning the fee arrangements between Plaintiff and its counsel. These averments are, therefore, denied.

36. Defendant incorporates each of the preceding answers by reference as if full set forth herein.

37. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in this paragraph of Plaintiff's Amended Complaint. These averments are, therefore, denied.

38. Denied. While Defendant has used BitTorrent to download video files, it is denied that he copied or distributed any films at any time. Defendant lacks knowledge or information sufficient to form a belief as to whether any—or even one—of the films downloaded were those identified by Plaintiff.

39. Denied, except to admit that Defendant has never, to the best of his knowledge and recollection, communicated directly with Plaintiff.

40. The allegations contained in this Paragraph state conclusions of law for which no response is necessary. To the extent a response is deemed necessary, Defendant denies such allegations.

41. The allegations contained in this Paragraph state conclusions of law for which no response is necessary. To the extent a response is deemed necessary, Defendant denies such allegations.

AFFIRMATIVE DEFENSES

42. Defendant incorporates each of the preceding answers by reference as if fully set forth herein.

43. Reference is made to Paragraph 6 of Plaintiff's Amended Complaint, wherein Plaintiff indicates that it has filed over 1,000 cases for infringement of its copyrights.

44. Based on a review of filings nationwide, Defendant believes, and therefore avers, that the number of lawsuits filed by Plaintiff in similar actions to be substantially higher than 1,000.

45. According to Plaintiff's own allegations, Plaintiff apparently monitored Defendants activity on BitTorrent over the course of two years prior to bringing the instant action.

46. During that two year period, the number of allegedly infringing incidents rose from seven in April of 2013 to 172 by April of 2015.

47. According to Plaintiff's own allegations, it was entirely able to prosecute any alleged or suspected infringement of its copyrights from a user at Defendant's IP address as early as April of 2013.

48. Instead, however, Plaintiff waited for two years while, as they allege, more and more of their copyrighted movies were downloaded, allegedly, without authorization.

49. The conduct of Plaintiff in this regard clearly points to course of conduct and dealing which is not designed to protect their legitimate intellectual

property rights, but rather to supplement their revenue streams with litigation damages well in excess of the actual rate at which such materials are licensed.

50. Defendant believes, and therefore avers, that Plaintiff is involved in a scam which relies on public humiliation to coerce settlements from persons who consume pornographic materials.

51. Review of numerous databases indicates that, during in the time period in question, numerous movies purported to be Plaintiff's copyrighted materials have appeared on BitTorrent before they were released on Plaintiff's website.

51. Despite this, Defendant has taken no public action to curb the proliferation of their materials by the individuals who initially obtain and release such videos, focusing their attentions instead on the much larger—and more profitable—class of persons who later obtain copies of such materials.

52. If Plaintiff intended to protect its legitimate interests in its copyrighted materials, it would certainly focus its considerable prosecutorial efforts towards—at least in part—those relatively few individuals who are distributing such materials in the first instance.

53. By failing to take appropriate steps to protect their copyrighted materials, Plaintiff's claims are barred by the doctrines of waiver and estoppel.

54. By perpetuating a scheme to coerce settlement proceeds before this Honorable Court, Plaintiff's claims are barred by the doctrine of unclean hands.

55. Plaintiff has, effectively, abandoned its copyright over the materials in question.

56. Plaintiff has failed to mitigate its damages.

57. Defendant reserves the right to add such additional defenses and counterclaims as may be revealed by the evidence through the course of discovery.

WHEREFORE, Defendant requests this Honorable Court dismiss Plaintiff's Amended Complaint with Prejudice.

Respectfully submitted,

CGA Law Firm

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2016, a true and correct copy of the foregoing Amended Answer to Plaintiff's Amended Complaint, was served via ECF upon the following:

Christopher P. Fiore, Esq.
FIORE & BARBER, LLC
418 Main Street, Ste. 100
Harleysville, PA 19438

By: /s/ Hunter B. Schenck, Esquire
Hunter B. Schenck, Esquire
Counsel for Defendant